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must suffer the one who charged himself with the obligation should bear the loss. 3 KENT COMM. 467. So it is generally held, though uniformity of decision is practically unattainable, that one will not be permitted to escape paying damages if there can be a substantial performance of the contract though literal performance is rendered impossible by an act of God. *School Dist. v. Dauchy*, 25 Conn. 530, 68 Am. Dec. 371; *McGehee v. Hill*, 4 Port. (Ala.) 170, 29 Am. Dec. 277; *Supt. of Public Schools v. Bennett*, 27 N. J. L. 513, 72 Am. Dec. 373.

It is obvious that a strict application of this rule will lead to great and unwarranted hardship in many cases; and so there are several well recognized exceptions to the rule, based upon the presumed intention of the parties. See *Singleton v. Carroll*, 6 J. J. Marsh. (Ky.) 527, 22 Am. Dec. 95; *Beach v. Crain*, 2 N. Y. 86, 49 Am. Dec. 369. Thus, where the impossibility is created by the law the general rule does not apply and the promisor is exonerated. *American Mercantile Exchange v. Blunt*, 102 Me. 128, 66 Atl. 212, 120 Am. St. Rep. 463, 10 L. R. A. (N. S.) 414, 10 Ann. Cas. 1022. But, as all contracts are made subject to the right of the state to prohibit certain acts in the exercise of the police power, the prohibition of the sale of liquor will not release a tenant from his obligation to pay rent for premises leased for use as a saloon. *Goodrum Tobacco Co. v. Potts-Thompson Liquor Co.*, 133 Ga. 776, 66 S. E. 1081, 26 L. R. A. (N. S.) 198; *Houston Ice & Brewing Co. v. Keenan*, 99 Tex. 79, 88 S. W. 197. So the promisor is released from liability when his death or sickness prevents him from performing a contract for personal services. *Blakely v. Sousa*, 197 Pa. St. 305, 47 Atl. 286, 80 Am. St. Rep. 821; *Marvel v. Phillips*, 162 Mass. 399, 38 N. E. 1117, 44 Am. St. Rep. 370, 26 L. R. A. 416; *Dickel v. Linscott*, 20 Me. 453.

Where the continued existence of the subject matter of the contract is essential to the performance, there is an implied condition that the subject matter will continue to exist, and its subsequent destruction relieves the promisor from all liability. *Taylor v. Caldwell*, 3 B. & S. 826; *Dexter v. Norton*, 47 N. Y. 62, 7 Am. Rep. 415; *Singleton v. Carroll*, *supra*. And for the same reason, it is held in many jurisdictions, that the performance of a contract will be excused where conditions essential to its performance do not exist. *Kinzer Construction Co. v. State* (Ct. Cl., N. Y.), 125 N. Y. Supp. 46. See *Buffalo etc. Co. v. Bellevue etc. Co.*, 165 N. Y. 247, 59 N. E. 5, 51 L. R. A. 951. While the modern tendency is in favor of recognizing this exception to the general rule, there are cases holding the contrary. *Supt. of Public Schools v. Bennett*, *supra*.

**CORPORATIONS—LIABILITY FOR TORTS—PUNITIVE DAMAGES.**—The appellee was assaulted by servants of the appellant corporation, acting within the scope of their authority. Such assault exposed the servants to a criminal prosecution; the corporation, however, not being subject to a criminal prosecution. *Held*, the appellant is liable for exemplary damages. *Indianapolis Bleaching Co. v. McMillan* (Ind.), 113 N. E. 1019. For principles involved, see 1 VA. LAW REV. 157.